

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

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MICHAEL F. McHUGH, CLERK
United States Bankruptcy Court
Savannah, Georgia

**IN RE: BOBBIE G. LILLIOTT,
(Chapter 7, Case 98-20744)**

**MARY JANE CARDWELL, CHAPTER 7
TRUSTEE,**

Plaintiff.

vs.

**GREEN TREE FINANCIAL SERVICING
CORPORATION,**

Defendant.

**ADVERSARY PROCEEDING NO.
99-02030**

MEMORANDUM AND ORDER

Plaintiff, the Trustee in the Debtor's Chapter 7 case, filed a Complaint seeking to avoid the Defendant Green Tree's security interest in a 1998 Clayton mobile home under 11 U.S.C. §547. The matter was tried on September 9, 1999. This Court has jurisdiction in this adversary proceeding by virtue of 28 U.S.C. §157(b)(2)(K). Based upon the evidence presented at trial and the applicable authorities, I make the following Findings of Fact and Conclusions of Law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

FINDINGS OF FACT

On April 2, 1998, Debtor signed a Manufactured Retail Installment Contract and Security Agreement in order to purchase a 1998 Clayton mobile home. The contract was then assigned to Defendant Green Tree. A Certificate of Title was issued by the Department of Revenue for the State of Georgia on June 6, 1998, reflecting Green Tree's security interest in the subject mobile home.

The records from the Department of Revenue for the State of Georgia indicate that the Certificate of Title issued on June 6, 1998 was not applied for until May 20, 1998 - i.e. more than twenty (20) days after the granting of the security interest by the Debtor. However, Defendant Green Tree made an initial application for title within twenty (20) days from the date of the contract - i.e. April 2, 1998, which was rejected by the Department of Revenue and returned to Green Tree under cover of letter dated April 20, 1998. Said initial application contained Green Tree's name and address and the required fee. After rejection of the initial application Defendant Green Tree resubmitted the title application on the subject

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mobile home, which was received by the Department of Revenue on May 20, 1998, and resulted in the issuance of the Certification of Title on June 6, 1998.

Debtor filed for protection under Chapter 13 of the Code on June 22, 1998, which was converted to a Chapter 7 case on March 2, 1999. The Plaintiff, Mary Jane Cardwell, was appointed the Trustee in the Chapter 7 case, and then filed this Adversary Proceeding on June 15, 1999, seeking to avoid the lien of Green Tree pursuant to her strong-arm powers.

CONCLUSIONS OF LAW

When a Trustee asserts the rights of a hypothetical lien creditor pursuant to §544, state law determines the rights and priorities of creditors in the subject property. In re Masvidal, 10 F. 3d 761, 763 (11th Cir. 1993). O.C.G.A. §40-3-50(b) provides in part:

A security interest is perfected by delivery to the commissioner...and application for a certificate of title containing the name and address of the holder of a security interest and the required fee. The security interest is perfected as of the time of its creation if the initial delivery to the commissioner...is completed within twenty (20) days thereafter, regardless of any subsequent rejection of the application for errors...When the security interest is perfected as provided for in this subsection, it shall constitute notice to everybody of the security interest of the holder.

Under 11 U.S.C. §547(c)(3)(B) the Trustee may not avoid a transfer of a security interest in property of the Debtor made on or within ninety (90) days before the date of the filing of the petition “that is perfected on or before twenty (20) days after the Debtor receives possession of such property.”

Thus, the defining issue in this case is whether Defendant Green Tree made its initial delivery of the application for a Certificate of Title to the Department of Revenue within twenty (20) days of the creation of its security interest in the subject mobile home. If so, regardless of any subsequent rejection of the application for errors, Green Tree’s security interest in the subject mobile home will be considered perfected as of the time of its creation, and, thus, its security interest would be superior to the judicial lien of the Trustee.

In the instant case, the evidence established the fact that although subsequently rejected, Green Tree’s initial delivery to the Department of Revenue of the application for a Certificate of Title with respect to the subject mobile home was made within twenty (20) days of the date of the creation of the security interest therein. Accordingly, under Georgia law Green Tree’s security interest in the subject mobile home was perfected at the time of its creation and, thus, the Trustee may not avoid Green Tree’s security interest under 11 U.S.C. §547(c)(3)(B).

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, ***IT IS THE ORDER OF THIS COURT*** that Defendant's lien on the 1998 Clayton mobile home is duly perfected, superior to the interest of the Chapter 7 Trustee, and not avoidable under 11 U.S.C. §547. Judgment will be entered in favor of the Defendant and the Complaint shall be dismissed.



LAMAR W. DAVIS, JR.
United States Bankruptcy Judge

Dated at Savannah, Georgia
this 14 day of September, 1999.
